

Police Powers and Responsibilities (Making Jack's Law Permanent) and Other Legislation Amendment Bill 2025

Explanatory Notes

For

Amendments to be moved during consideration in detail by the Honourable Daniel Purdie MP, Minister for Police and Emergency Services

Short title

The short title of the Bill is the Police Powers and Responsibilities (Making Jack's Law Permanent) and Other Legislation Amendment Bill 2025.

Policy objectives and the reasons for them

The Bill seeks to rectify deficiencies in the declaration process for two former Police Commissioners as chief executives of the Queensland Police Service (QPS) and arrangements related to the acting appointment of a former Fire Commissioner, as the chief executive of the former Department, Queensland Fire and Emergency Services (QFES).

The policy objective of these amendments is to ensure the validity of anything done or omitted to be done by these two former Queensland Police Commissioners in their purported capacity as chief executives of the QPS and the former Fire Commissioner in his purported capacity as acting chief executive of QFES.

Former Police Commissioners

The appointment of Queensland's Police Commissioner is made under the *Police Service Administration Act 1990* (PSA Act). Responsibilities and powers of Police Commissioners in the performance of their role as the police commissioner are contained in the PSA Act and the *Police Powers and Responsibilities Act 2000*. These Acts anticipate that a person appointed as a Police Commissioner is also the chief executive of the QPS.

To perform the role of chief executive under the *Public Service Act 2008* (the repealed PS Act), a Police Commissioner was required to be declared the chief executive of the QPS. Two former Police Commissioners were not declared to be chief executives for this purpose.

To correct this, amendments to the *Public Sector Act 2022* (the PS Act) are sought to validate anything done or omitted to be done by these two former Police Commissioners, in their purported capacity as chief executives of the QPS.

Former Fire Commissioner

Under the repealed PS Act, the Minister responsible for administering a department could appoint a person to act as the department's chief executive. This provision was relied upon to appoint a former Fire Commissioner as the acting chief executive of the then QFES.

However, provisions of the *Fire Services Act 1990* (the FS Act) in force at that time, which contained the authority for the appointment of a fire commissioner, anticipated that the fire commissioner and the chief executive were two separate people, calling into question the validity of this acting appointment. Consequently, amendments to the PS Act are sought to declare the relevant Minister as having had the power to appoint the former Fire Commissioner to act as the chief executive of QFES and to make validating amendments similar to those proposed for the former Police Commissioners.

The Bill also seeks to validate arrangements where a person acted as the chief executive of the QPS or QFES because that person was acting as the Police or Fire Commissioner. These amendments declare that where a person performed the role of chief executive while acting as a commissioner, the person is taken to have been validly appointed to act in the position of chief executive for the relevant period.

Where necessary amendments related to QFES also declare that the relevant minister had the power to:

- appoint persons to act as the chief executive; or
- appoint a person to act as Fire Commissioner and chief executive concurrently.

The Bill also validates things done by others who relied on the validity of these arrangements.

Declarations for stated office holders to be chief executives of the relevant department have been in place for police commissioners since 1 March 2023 and fire commissioners since QFES became a department on 1 July 2014, therefore validating amendments are not required in relation to chief executives after these dates.

These declarations were made under section 95 of repealed PS Act and/or section 173 of the *Public Sector Act 2022* (PS Act) whereby a person appointed to a stated office, such as the Police Commissioner or Fire Commissioner, is declared the chief executive of a stated department. These declarations, coupled with arrangements for acting appointments included at section 28B of the *Acts Interpretation Act 1954* (AIA), provide the necessary authority for those appointed to act as a Commissioner to also perform the role of chief executive.

Specifically, under section 24(B)(8)(b) of the AIA, if a person is appointed to act as the Commissioner, the person is also empowered to perform the role of the chief executive as laws,

such as the declaration, apply during the acting period so that the person is taken to be chief executive.

Achievement of policy objectives

The Bill achieves the policy objective by amending the PS Act to retrospectively:

- validate the role two former Police Commissioners performed as chief executive of the QPS and one former Fire Commissioner performed as acting chief executive of the then QFES;
- validate acts or omissions done by these former Commissioners in the capacity as chief executive, or their delegates or the relevant department, if the acts or omissions would have been valid and lawful had the arrangements relied upon to perform the role of chief executive been valid;
- validate things done or omitted to be done by others who had relied upon the validity of decisions made or actions taken by these former Commissioners in the role of chief executive; and
- declare that the relevant Minister had the power to appoint of the former Fire Commissioner to act as chief executive of the then QFES for the period from 1 November 2013 to 30 June 2014.

Alternative ways of achieving policy objectives

There are no alternative means of achieving the policy objectives.

Estimated cost for government implementation

There are no additional costs to government in implementing the amendments.

Consistency with fundamental legislative principles

Fundamental legislative principles (FLPs) under the *Legislative Standards Act 1992* (LS Act) require legislation to have sufficient regard for the rights and liberties of individuals by ensuring it does not adversely affect rights and liberties, or impose obligations, retrospectively (s4(3)(g) of the LS Act).

Legislating to retrospectively validate the appointments and decisions of certain Commissioners in their capacity as chief executives, or acting chief executive (or others who relied on the validity of these arrangements) raises potential inconsistency with this FLP, as these amendments are retrospective and potentially impact an individual's right to argue that a decision they were impacted by was not lawful as the relevant decision-maker was not lawfully appointed or empowered to perform the role.

Despite this, the amendments are considered justifiable as they are curative in nature and the invalidity of appointments and decisions were an unintended outcome arising from deficiencies in administrative processes. The amendments also provide certainty as to the legal effect of those appointments and decisions which were made.

The amendments are also considered justifiable as they only validate decisions to the extent they would have been valid and lawful had the person been validly appointed. The amendments

will not alter the fairness of former decisions or past actions and there is nothing to indicate that things done or omitted to be done by these former Commissioners in their purported capacity as chief executives would have been different had the declarations existed or the acting appointment been valid. The relevant actions or decisions would have been subject to the same processes, protections and applicable appeal rights had the appropriate arrangements existed.

No other potential inconsistencies with FLPs have been identified.

Consultation

As the amendments are of a technical and corrective nature, consultation with external stakeholders was not considered necessary.

Consistency with legislation of other jurisdictions

The amendments are specific to the State of Queensland, relate to specific legislation in Queensland, and are not uniform with, or complementary to, legislation of the Commonwealth or another state.

Notes on provisions

Part 3A Amendment of Public Sector Act 2022

Amendment 1 inserts a new part 3A into the Bill to amend the *Public Sector Act 2022* (PS Act). This amendment is inserted after clause 19 of the Bill.

Clause 19A amends the Chapter provides that this part amends PS Act.

Clause 19B amends the Chapter 9 heading to remove the reference to savings and include a reference to declaratory and validating provisions.

Clause 19C amends the Part 2 heading of Chapter 9 so that it no longer refers to savings and refers to transitional provisions for the PS Act.

Clause 19D inserts a new Part 4 for Chapter 9 of the PS Act, titled 'Declaratory and validating provisions for Police Powers and Responsibilities (Making Jack's Law Permanent) and Other Legislation Amendment Act 2025'.

Division 1 of Part 4 provides preliminary information for the Part, including definitions at section 330 and clarification of particular references made in this part at section 331.

Division 2 of Part 4 contains provisions relating to the *Fire Services Act 1990*. This includes a new section 332 to declare that the relevant Minister is taken to have had the power under section 94 of the *Public Service Act 2008* (the repealed PS Act) to appoint a person to act as the chief executive of the then Queensland Fire and Emergency Services (QFES) during the validation period, despite provisions of the *Fire Services Act 1990* in force at the time which anticipated that the role of Fire Commissioner and chief executive would be performed by two separate people.

The validation period at section 332 applies from 1 November 2013 to 30 June 2014, which is the period a former Fire Commissioner acted as the chief executive.

The provision retrospectively permits the former Fire Commissioner to hold this position and to act as the chief executive at the same time. This section also validates:

- anything done or omitted to be done by the former Fire Commissioner in the capacity as acting chief executive or another entity including other persons (such as delegates of the chief executive) during the validation period, that would have been valid and lawful had the appointment as acting chief executive been valid; and
- things done or omitted to be done by others, during and outside of the validation period, in reliance of the validity of the acting appointment.

Amendments to the *Fire Services Act 1990*, which commenced on 21 May 2014 removed provisions which prevented the same person performing both roles. The former Fire Commissioner was declared the chief executive of QFES under section 95 of the repealed PS Act from 1 July 2014.

Sections 333 and 334 contain validating arrangements related to those who performed the role of acting chief executive and acting Fire Commissioner during the relevant validation period.

Section 333 applies where the person was appointed under the *Fire Services Act 1990* to act as the Fire Commissioner and appointed under section 94 of the repealed PS Act to act as chief executive of QFES.

Section 334 applies where a person was appointed under the *Fire Services Act 1990* to act as the Fire Commissioner and no one was appointed under section 94 of the repealed PS Act to act as chief executive of QFES. In this circumstance, the person appointed to act as the Fire Commissioner is taken to be the person who acted as the chief executive of QFES.

Section 333 applies to the validation period from 1 November 2013 to 20 May 2014, which is the period where a person could not validly hold, or act in, the positions of Fire Commissioner and chief executive at the same time.

Section 333 contains arrangements to retrospectively permit the same person to act in both positions at the same time and to validate:

- anything done or omitted to be done by that person acting in either capacity (acting Fire Commissioner or acting chief executive) or another entity including a delegate of the person, during the period the person acted in these roles, that would have been valid and lawful had the appointments as acting Fire Commissioner and acting chief executive been valid; and
- things done or omitted to be done by entities, during the period the person acted in these roles or outside this period, in reliance of the validity of the acting appointments.

Section 334 contains validating arrangements where a person was appointed during the validation period of 1 November 2013 to 30 June 2014 to act as Fire Commissioner (the acting period) and performed the functions of the chief executive of QFES without being appointed under section 94 of the repealed PS Act to act in the chief executive role.

Different validating arrangements apply to take account of the differences in the *Fire Services Act 1990* that applied before and from 21 May 2014. Arrangements that applied before 21 May 2014 require an additional declaration as provided for at section 334(3) so that a person is taken to have been validly appointed under section 94 of the repealed PS Act to act as the chief executive, for the acting period, despite provisions of the *Fire Services Act 1990*, in force at that time. This declaration is necessary because provisions of the *Fire Services Act 1990*, in force at that time, prevented the same person from holding the office of Fire Commissioner and chief executive concurrently.

However, an amendment to permit the appointment of the person as chief executive, despite the provisions of the *Fire Services Act 1990*, is unnecessary from 21 May 2014 onwards, as amendments to this Act, which commenced on 21 May 2014, enabled the same person to perform both roles.

Therefore, the amendment at section 334(5) which applies to a person appointed under the *Fire Services Act 1990* to act in the office of fire commissioner on or after 21 May 2014, declares the person is taken to be validly appointed under section 94 of the repealed PS Act to act as the

chief executive for the acting period, without including the reference to this applying despite the *Fire Services Act 1990*.

In addition to declaring the person is taken to be validly appointed to act as chief executive during the period the person performed the role of chief executive (the acting period), section 334 validates:

- anything done or omitted to be done by a person as acting chief executive or another entity which includes another person, such as a delegate of the chief executive, during the acting period that would have been valid and lawful had the person performing the role of acting chief executive been validly appointed under the repealed PS Act; and
- things done or omitted to be done by entities during and outside of the acting period, in reliance of the validity of the acting appointment.

Part 4 also creates a new Division 3 to validate arrangements related to former Police Commissioners or acting Police Commissioners performing the role of chief executive of the Queensland Police Service (QPS) between 1 November 2012 to 28 February 2022.

Section 335 declares a person appointed to the office of Police Commissioners, during the validation period, as defined in this section, to be taken to have been validly declared under the repealed PS Act as the chief executive of the Queensland Police Service (QPS) for the period they were appointed as Police Commissioner (the appointment period).

This section also validates:

- anything done or omitted to be done by the former Police Commissioners as the chief executive of the QPS or another entity, including other persons, such as delegates of the chief executive, during the appointment period, that would have been valid and lawful had the relevant Police Commissioner been validly declared as chief executive under the repealed PS Act; and
- things done during and outside of the appointment period by entities in reliance of the validity of these chief executive arrangements.

It is not necessary to declare a chief executive of QPS after 28 February 2022 as the person who holds the office of Police Commissioner is declared to be the chief executive of QPS for the time the person holds the office of Police Commissioner. This declaration was made under section 173 of the PS Act and was effective from 1 March 2023.

Section 336 applies validating arrangements to circumstances where a person performed the role of chief executive because they were appointed during the validation period (1 November 2012 to 28 February 2022) to act as the Police Commissioner. This section declares that the person is taken to have been validly appointed to act as the chief executive under section 94 of the repealed PS Act during the period the person acted as Police Commissioner (the acting period).

This section also validates:

- anything done or omitted to be done by the person acting as chief executive or another entity including another person (such as a delegate of the chief executive) during the acting period, that would have been valid and lawful had the person been validly appointed to act as the chief executive under section 94 of the repealed PS Act; and

- things done by entities, during or outside the acting period, in reliance of the validity of the acting chief executive arrangements.

Section 336 is included out of an abundance of caution as, consistent with section 24B(8)(b) of the *Acts Interpretation Act 1954* (AIA), the amendment at section 335(2), which declares that a person appointed as Police Commissioner during the validation period is taken to have been declared under section 95 of the repealed PS Act to be the chief executive of the QPS, applies to a person appointed to act as the Police Commissioner.

Section 24B(8)(b) of the AIA applies to a person appointed to act in an office (the appointee) and provides that laws apply to the appointee, and to other persons in relationship to the appointee, as if the appointee were the holder of the office.

On this basis the declaration referred at section 335(2), which is a law, applies to a person appointed to act as the Police Commissioner, so that the person is taken to have been the chief executive of the QPS for the period the person was appointed to act as the Police Commissioner.

For completeness, it is noted that a declaration made under current section 173 of the PS Act, which commenced on 1 March 2022 to coincide with the commencement of the PS Act, declares the holder of the office of Police Commissioner to be the chief executive of the QPS. Section 24B(8)(b) of the AIA applies to extend this declaration to a person acting as Police Commissioner so the person is taken to be the chief executive of the QPS for the acting period.

Amendment 2 amends the long title of the Bill to include a reference to the *Public Sector Act 2022*.